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**Troutbrook Company, LLC d/b/a Brooklyn 181 Hospitality, LLC and New York Hotel and Motel Trades Council, AFL-CIO.** Case 29-CA-232891

June 3, 2019

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND KAPLAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 18, 2018, by New York Hotel and Motel Trades Council, AFL-CIO (the Union), the General Counsel issued the complaint on February 11, 2019, alleging that Troutbrook Company, LLC d/b/a Brooklyn 181 Hospitality, LLC (the Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 29-RC-216327. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On March 11, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Summary Judgment. On March 14, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply to the Respondent's response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative based on its objections to the election in the underlying representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any

representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a domestic corporation with its principal office located at 515 Madison Avenue, 31st Floor, New York, New York, and a place of business located at 181 3rd Avenue, Brooklyn, New York, and has been engaged in the operation of a hotel.

During the 12-month period preceding the issuance of the complaint, which period is representative of the Respondent's operations generally, the Respondent, in its course and conduct of business operations described above, derived gross annual revenues in excess of \$500,000, and purchased and received at its Brooklyn facility goods, supplies, and materials in excess of \$5,000 directly from enterprises located outside of the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

Excluded: Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

On June 26, 2018, the Board conducted a representation election among the Respondent's unit employees. On August 3, 2018, based on objections to that election,

the Regional Director for Region 22 ordered that a rerun election be conducted.<sup>1</sup>

On September 6, 2018, the Board conducted a rerun election among the Respondent's unit employees. A majority of the unit employees who voted in the September 6, 2018 election selected the Union as the exclusive collective-bargaining representative of the Respondent's unit employees.

On September 24, 2018, the Regional Director for Region 22 issued a Decision on Objections and Certification of Representative, certifying the Union as the exclusive collective-bargaining representative of the unit. On December 13, 2018, the Board denied the Respondent's request for review of the Regional Director's Decision. *Troutbrook Co. LLC*, 367 NLRB No. 56 (Dec. 13, 2018).<sup>2</sup>

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

### B. Refusal to Bargain

On October 2, October 16, and December 17, 2018, the Union, in writing, requested that the Respondent commence negotiations for an initial collective-bargaining agreement regarding the terms and conditions of employment for the Respondent's unit employees. On October 19, 2018, the Respondent, in writing, refused the Union's request to commence negotiations for an initial collective-bargaining agreement covering unit employees. Since that date, the Respondent has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By failing and refusing since October 19, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

<sup>1</sup> The case was transferred to the Regional Director for Region 22 because the Respondent's election objections included allegations of misconduct by Region 29.

<sup>2</sup> In opposing the General Counsel's summary judgment motion, the Respondent repeats a claim, first made in its request for review, that alleged misconduct by the Union before the first election had a "continuing impact" on the rerun election. The Respondent did not offer any evidence of such "continuing impact" in its request for review and does not do so here. We note further that the Respondent did not file unfair labor practice charges related to the Union's alleged misconduct.

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

### ORDER

The National Labor Relations Board orders that the Respondent, Troutbrook Company, LLC d/b/a Brooklyn 181 Hospitality, LLC, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with New York Hotel and Motel Trades Council, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

Excluded: Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

(b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 19, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 3, 2019

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John F. Ring, Chairman

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with New York Hotel and Motel Trades Council, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Included: All full-time and regular part-time front-desk employees, housemen/bellmen, housekeepers, laundry attendants and food and beverage employees employed by the Employer at 181 3rd Avenue, Brooklyn, New York.

Excluded: Executive management, sales personnel, fire safety directors, all other employees including guards and supervisors, as defined by the National Labor Relations Act.

TROUTBROOK COMPANY, LLC D/B/A

BROOKLYN 181 HOSPITALITY, LLC

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Board's decision can be found at [www.nlr.gov/case/29-CA-232891](http://www.nlr.gov/case/29-CA-232891) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

